NOTICE TO A CORPORATION FROM ENTRIES ON ITS BOOKS.

SUPPOSE that the books of a corporation kept in the usual course of its business record certain facts. Suppose further that an officer of the corporation, acting on its behalf within the scope of his powers but personally ignorant of the facts so recorded, makes a contract with respect to which those facts are material. Is the corporation charged with notice of those facts? The question may be put in concrete form. Assume that the books of a corporation disclose that a certain negotiable note is held by A. in trust for B. A. brings the note before maturity to an officer of the corporation who is personally ignorant of the trust. This officer discounts the note on behalf of the corporation and applies the proceeds to reduce the personal overdrafts of A. Is the corporation a *bonâ fide* purchaser of the note or does it hold the note subject to the trust? In a word, is a corporation charged with notice of the facts which are recorded upon its books in the usual course of its business even though the officer who acts on its behalf is ignorant of them?

Our problem divides into three parts. First, can a corporation have knowledge or notice? Second, how can a corporation receive knowledge or notice? Third, if a corporation have knowledge or notice is it material that the officer who acts on its behalf has no personal knowledge of the matter in question?

I.

A distinction is sometimes made between actual knowledge or notice and constructive notice. Actual knowledge or notice involves conscious perception of a fact. It is the result of the operation of mind upon the impressions received through the senses. Constructive notice is a legal inference drawn from an opportunity to know which the law presumes that the individual has utilized. Thus the law ordinarily presumes that an agent has disclosed to his principal whatever pertinent information the agent possesses with

respect to the matters in which he acts as such agent.[1] It is said, therefore, that the knowledge of the agent as to matters in which he acts for the principal is notice to the principal, even though no disclosure has in fact been made.[2] Again, the recording-acts frequently make the records made thereunder constructive notice of the facts recorded even though these records have not been examined. In some states the rule obtains that one who receives a document and has opportunity to read it, is charged with constructive notice of its contents even though the document be in fact unread.[3] It has also been held that open and unequivocal possession of land is constructive notice of the interest of the possessor therein.[4] In a word, constructive notice is merely evidence of knowledge of so violent a character that the law will not permit it to be controverted.[5] In many instances, therefore, constructive notice is a substitute for and legally equivalent to actual knowledge.

Can a corporation have actual knowledge? It is a legal entity. It has no physical existence nor outward embodiment. It has no mind. It has only representatives. In certain aspects it is represented by the stockholders, yet the stockholders are not the corporation. The corporation can neither think, feel, nor perceive. It follows that this incorporeal legal entity cannot receive or possess actual knowledge.

But a corporation does business as individuals do. It can contract though it actually possesses no mind to meet the mind of the other party. It can conspire as if it possessed a physical brain.[6] It would be most unjust if it could escape the liabilities imposed by knowledge of facts because it possesses no physical intelligence

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[1] Suit *v.* Woodhall, 113 Mass. 391, 395 (1873); Bank of the United States *v.* Davis, 2 Hill (N. Y.) 451, 464 (1842); The Distilled Spirits, 11 Wall. (U. S.) 356, 367 (1870); Stanley *v.* Schwalby, 162 U. S. 255, 276 (1896); Cole *v.* Getzinger, 96 Wis. 559, 576, 71 N. W. 75, 80 (1897).

[2] See cases cited in note 1.

[3] Hoadley *v.* Northern Transportation Co., 115 Mass. 304 (1874); Bostwick *v.* Mutual Life Ins. Co., 116 Wis. 392, 92 N. W. 246 (1903); Livingston *v.* Maryland Ins. Co., 7 Cranch (U. S.) 506 (1813).

[4] Simmons Creek Coal Co. *v.* Doran, 142 U. S. 417 (1892).

[5] See Townsend *v.* Little, 109 U. S. 504, 511 (1883); Shauer *v.* Alterton, 151 U. S. 607 (1894).

[6] United States *v.* MacAndrews & Forbes Co., 149 Fed. 823 (C. C., S. D. N. Y., 1906).

and is incapable of those intellectual processes which result in knowledge in the individual. Corporations, it is true, can act only through their officers, directors, attorneys, servants, and agents. But even in the case of a human principal it is settled law that knowledge as to matters within the scope of the agency possessed by an agent who acts for his principal is notice to the principal, even though the agent in fact make no disclosure.[7] Indeed constructive notice to the agent is constructive notice to the principal.[8] This doctrine of constructive notice has been extended in its fullest application to corporations. True, the officer, director, servant, or agent cannot make disclosure to the corporate entity. But, in so far as he represents the corporation and acts for it, knowledge or notice possessed by him as to matters within the scope of his authority is as matter of law notice to the corporation.[9] As to corporations, then, constructive notice is a substitute for and legally equivalent to actual or constructive knowledge in a human being.

II.

It has been necessary to consider these somewhat elementary matters in order to determine the effect of corporate records as notice to the corporation. Generally speaking, corporate records are of two kinds. First come the records of corporate action by the stockholders, board of directors, executive committee, and the like. These generally consist of votes or resolutions, or minutes of business transacted at the meetings. The second species of corporate record is its business books and incidental records, such as its journal, cash-book, ledger, check-books, and files of letters. These also record corporate action, though usually action of a less solemn character than the votes or resolutions passed at corporate meetings. Corporate books, then, whether minute books or account books, record corporate action. They differ in degree with the power of the corporate agents whose actions they record.

It seems curious that there is little, if any, authority upon the

[7] *Ante*, note 1.

[8] Simmons Creek Coal Co. *v.* Doran, 142 U. S. 417 (1892).

[9] Manhattan Bank *v.* Walker, 130 U. S. 267 (1889); National Security Bank *v.* Cushman, 121 Mass. 490 (1877); Trapp *v.* Fidelity National Bank, 101 Ky. 485, 41 S. W. 577 (1897); Twenty-Sixth Ward Bank *v.* Stearns, 148 N. Y. 515, 42 N. E. 1050 (1896).

effect of corporate minute books as notice to the corporation. The writer has been unable to find any case which directly passes on this question. On principle, however, the result seems clear. The minute books record action on behalf of the corporation by its stockholders, directors, executive committee, or the like. Here we have every element necessary to affect a human principal with constructive notice through his agent. The action is on behalf of the corporation. Generally it is not in excess of the authority possessed by those who act. The information recorded is present to the minds of those who act, as the record shows. These are precisely the requisites of notice to a principal through his agent.[10] There seems little doubt that the same rule will be applied to a corporation as to a human principal.

The argumentative authority looks the same way. Thus knowledge possessed by a director who does not act on behalf of the corporation does not affect the corporation.[11] But if a director meets and acts with the board, the corporation is charged with the knowledge which he possesses as to the matter in hand even though he does not disclose it.[12] If information possessed by a director becomes notice to the corporation when he acts with the board even though it remains locked in his own breast, how much more effective must be information which is disclosed and spread upon the records? Moreover, these very records are the best evidence of the matters properly recorded. Duly identified, they are admissible even between third parties.[13] Evidently a corporation cannot escape notice of its own corporate acts. It seems to follow that its own records, which are the best evidence of what was done, must be notice to it of that which is properly recorded.

Perhaps some question might arise as to a record of acts purporting to be in behalf of the corporation but in excess of its cor-

[10] The Distilled Spirits, 11 Wall. (U. S.) 356 (1870).

[11] Fulton Bank *v.* Canal Co., 4 Paige (N. Y.) 127 (1833); Atlantic State Bank *v.* Savery, 82 N. Y. 291 (1880); Casco National Bank *v.* Clark, 139 N. Y. 307, 34 N. E. 908 (1893); First National Bank *v.* Christopher, 40 N. J. L. 435 (1878); Innerarity v. Merchants' Bank, 139 Mass. 332, 1 N. E. 282 (1885).

[12] Bank of the United States *v.* Davis, 2 Hill (N. Y.) 451 (1842); Twenty-Sixth Ward Bank *v.* Stearns, 148 N. Y. 515, 42 N. E. 1050 (1896); National Security Bank *v.* Cushman, 121 Mass. 490 (1877); Beacon Trust Co. *v.* Souther, 183 Mass. 413, 67 N. E. 345 (1903); Union Bank *v.* Campbell, 4 Humph. (Tenn.) 394 (1843).

[13] Blake *v.* Griswold, 103 N. Y. 429, 9 N. E. 434 (1886); Howard Ins. Co. *v.* Hope, etc. Ins. Co., 22 Conn. 394 (1853); Hudson *v.* Carman, 41 Me. 84 (1856).

porate powers. At one time some courts took the view that a corporation was unable to act in excess of the powers conferred upon it. But this view is now generally exploded. True, the courts will not, as a general rule, aid either party to enforce an executory agreement in excess of the corporate powers. Yet they will usually decline to undo an executed transaction on the ground that it was beyond the powers of the corporation.[14] Indeed an executed *ultra vires* act may be the foundation of corporate rights and liabilities.[14] It follows that an act in excess of the corporate powers is still a corporate act, though an improper one. But such an act, if transacted at a corporate meeting, should appear in the records. It is the duty of the recording officer to keep a true record, and if such act were not recorded the record would be untrue. Yet if a corporation can sin, and it is the duty of the recording officer to record the acts of the meeting truly whether they be proper or *ultra vires*, it would be most inequitable to hold that only the records of good deeds are notice to the corporation. It would put a premium upon *ultra vires* transactions. Consequently whatever is properly recorded should be notice to the corporation whether the matter recorded be within or outside the corporate powers.

III.

We turn now to the effect of entries in the usual course of business upon the less formal books of the corporation, such as the journal, cash-book, ledger, and the like. Such entries are usually made by servants of the corporation having small powers and limited discretion. Yet the humblest servant of a corporation may be a conduit of information and affect the corporation with notice. If the knowledge possessed by the servant and present to his mind [15] be pertinent to matters within the scope of the servant's employment and concern matters as to which he acts on behalf of the corporation, such knowledge becomes the knowledge of the corporation. Thus where it was part of the duty of a cleaner of

[14] Executed Ultra Vires Transactions, by Edward H. Warren, 23 HARV. L. REV. 496.

[15] The Distilled Spirits, 11 Wall. (U. S.) 356, 367 (1870) *semble*; Constant *v.* University of Rochester, 111 N. Y. 604, 19 N. E. 631 (1889). But the evidence that the transaction was present to the agent's mind need not be strong, and such knowledge may be inferred from the circumstances. Holden *v.* New York & Erie Bank, 72 N. Y. 286 (1878).

electric lights to note and report defects, and the cleaner in the exercise of his service observed that a pole was defective but failed to report, the corporation was nevertheless charged with his knowledge.[16] Again, a notice as to matters within the scope of his employment given to a bookkeeper,[17] local insurance agent,[18] general claim agent,[19] paying teller,[20] or receiving teller[21] has been held to be notice to the principal. On the other hand, a notice of the dissolution of a partnership given to a drummer whose duty did not extend beyond receiving and transmitting orders is knowledge beyond the scope of the drummer's employment and so not notice to his principal.[22] But book entries made in the usual course of business fall within the strictest limits of the general rule. They are made by a servant acting within the scope of his employment and in the exercise of his service. On principle, therefore, such entries should be notice of the matters entered. Here also the direct authority is singularly scanty. The writer has found only three cases which directly deal with the question.

In Brady *v.* North Jersey Street Ry. Co.[23] a motorman brought action to recover for injuries caused by a defective car. The defendant company kept a book in which it was the duty of each motorman to enter the condition of his car at the close of the run. The plaintiff was permitted to prove an entry as to the car in question by another motorman in these terms: "bad hand brake, sand box out of order." On appeal the judgment for the plaintiff was reversed[24] on the ground that there was no admissible evidence of the defective condition of the car. In regard to the effect of this entry, Bergen, J., said:

"That this evidence would have some weight in determining the question whether the defendant had notice of the defective condition of the

[16] City of Denver *v.* Sherret, 88 Fed. 226 (C. C. A., Eighth Circ., 1902).

[17] Dillon *v.* Anderson, 43 N. Y. 231 (1870).

[18] Dick *v.* Equitable Fire, etc. Ins. Co., 92 Wis. 47, 65 N. W. 742 (1896).

[19] Atkinson *v.* Chicago & N. W. Ry., 93 Wis. 362, 67 N. W. 703 (1896).

[20] Atlantic Bank *v.* Merchants' Bank, 10 Gray (Mass.) 532 (1858); Skinner *v.* Merchants' Bank, 4 Allen (Mass.) 290 (1862).

[21] First National Bank *v.* Fourth National Bank, 56 Fed. 967 (C. C. A., Sixth Circ., 1893).

[22] Neal *v.* M. E. Smith & Co., 116 Fed. 20 (C. C. A., Eighth Circ., 1902).

[23] 76 N. J. L. 744, 71 Atl. 238 (1908), headnote inadequate.

[24] The verdict for the plaintiff was set aside by the Supreme Court (74 N. J. L. 413), and this action was affirmed by the Court of Errors and Appeals.

car, if it was defective, cannot be disputed. The condition of the car cannot be established by such entry, and its use must be confined to the question whether defendant had notice of a condition shown to exist, and cannot be accepted as primary proof of the condition it states."

In New England Car-Spring Co. *v.* Union India Rubber Co.[25] the right of the plaintiff depended on the assent of the defendant to the grant of certain patent rights. The grantor had given $1000, one-fourth of the purchase price received from the plaintiff, to the treasurer of the defendant in accordance with a prior agreement. The receipt of this amount was entered upon the books of the company. For the defendant it was argued that the entries on the books were not such notice that the retention of the $1000 constituted an assent. The court ruled that the entries on the books of the corporation constituted notice to it so that the retention of the $1000 was an assent to the sale. Ingersoll, J., said:

"It appears on the books of the corporation that a draft, drawn by Charles Ely on Edward Crane, for $1000 was received, and that the 'patent account' was credited with that draft. . . . The entry on the books fully apprised the corporation that the $1000 draft was paid and received on the 'patent account.' It also apprised the directors. By inquiry the directors could have ascertained for what particular reason the $1000 draft was credited to 'the patent account.' It was the duty of the corporation, through its agents, the directors, to make such inquiry. It is to be presumed that the directors performed this duty. . . . If the directors, by a neglect of their duty, were ignorant of this entry on the books, and of the purpose for which the draft was received, the corporation cannot set up such neglect of duty in its agents, to show that it had no knowledge of the transaction as it actually was."

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[25] 4 Blatchf. 1 (C. C., Second Circ., 1857), headnote inadequate. In more detail the facts were these: In 1844 Goodyear, the patentee, gave to the defendant an exclusive license covering the whole right granted by the patent. He, however, reserved to himself the privilege of selling for a sum in gross the exclusive right for any particular subject of manufacture, provided that such right should first be offered to the defendant at the same price and such offer remain unaccepted by the defendant for sixty days. If the defendant should not accept the offer, one-fourth of such purchase price was to be paid to it before the right was transferred to the purchaser. In 1847 Goodyear sold to Charles Ely and Edward Crane for $4000 the exclusive right to use his invention in the manufacture of car springs. Before the sale he orally offered this right at that price to the treasurer of the defendant. The offer was not accepted within the sixty days. Before the transfer to Ely and Crane, Goodyear gave to the treasurer of the defendant a draft for $1000, which was cashed and the proceeds entered on the

In Allen *v.* Puritan Trust Co.[26] the proof showed that one Baker had two accounts with the defendant trust company. The first was his personal account. The other was entered upon the books as "Estate of Albert H. Bird, William L. Baker, administrator." On four different occasions Baker's personal account became overdrawn. He then drew checks upon the "Estate" account, which the defendant accepted in payment of the overdraft. After Baker's death the new administrator *de bonis non* of Albert H. Bird brought suit to recover the amount of these checks. A master found for the plaintiff. In affirming this decree the court said, through Braley, J.:

"The personal property of the estate was held by him [Baker] in a fiduciary capacity, and the nature of the respective accounts was fully disclosed by the contract. And in the discharge of their several duties, which were fully detailed by the master, the officers and agents of the defendant [trust company] were charged with knowledge of the scope and effect of the various entries relating to the deposit and shown on the defendant's books."

These two latter cases, then, hold that a corporation is charged with notice of entries made upon its books in the usual course of business. It is also said that the agents of the corporation in acting for it are charged with knowledge of such entries. It seems unnecessary, however, to impute such knowledge to the agents. The act of such agents on behalf of the corporation is the act of the corporation itself.[27] The corporation itself has notice of the facts in question from its own books, through the agents who made the entries. The situation then is that a principal who knows the facts acts through an agent who is ignorant. But if the principal knows the facts that should be sufficient. The better view would seem to be that the corporation is directly affected with notice of the entries on its own books, rather than that such notice is constructively dragged into the ignorant agent in order that his constructive knowledge may become the constructive knowledge of

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books. Crane and Ely assigned their right to the plaintiff. The court granted a provisional injunction to refrain infringement of the patent by the defendant.

[26] 211 Mass. 409, 97 N. E. 916 (1912).

[27] American Fur Co. *v.* United States, 2 Pet. (U. S.) 358, 364 (1829); Clicquot's Champagne, 3 Wall. (U. S.) 114, 140 (1865); Stockwell *v.* United States, 13 Wall. (U. S.) 531, 550 (1871).

his principal. The absurdity of charging the corporation with knowledge indirectly through the ignorant agents instead of directly through the entries is shown by those cases which hold that even directors are not personally chargeable as matter of law with knowledge of that which appears upon the corporate books.[28]

Another line of cases argumentatively supports the view that a corporation as matter of law has notice of those entries made upon its books in the usual course of business. Such books or entries are competent against the corporation as an admission by it. Thus a schedule,[29] annual report,[30] report of superintendent to directors,[31] train sheet,[32] account on the corporate books,[33] and deposit envelope [34] have all been held competent as admissions by the corporation. But if the nature of the entry were not known to the corporation, the entry itself would scarcely constitute an admission by the corporation. Moreover, these cases further support the view that the making of an entry upon the books of a corporation in the usual course of business is a corporate act. A corporation can scarcely be held to be ignorant of the things which it does as a corporation.

Yet it does not follow that everything which appears upon the books of a corporation is an admission by it or notice to it. It is familiar law that the knowledge of an agent engaged in defrauding his principal is not notice to the principal.[35] The presumption

[28] Briggs *v.* Spaulding, 141 U. S. 132 (1890); Wakeman *v.* Dalley, 51 N. Y. 27 (1872); Hallmark's Case, 9 Ch. D. 329 (1878). But it is the personal duty of directors to use reasonable diligence to ascertain the facts as to the corporation and its business. Martin *v.* Webb, 110 U. S. 7 (1883).

[29] Clicquot's Champagne, 3 Wall. (U. S.) 114 (1865).

[30] Bailey *v.* Railroad, 22 Wall. (U. S.) 604 (1874).

[31] Vicksburg, etc. R. Co. *v.* Putnam, 118 U. S. 545 (1886); Le Abra, etc. Mining Co. *v.* United States, 175 U. S. 423 (1809).

[32] Missouri, K. & T. Co. *v.* Elliott, 102 Fed. 96 (C. C. A., Eighth Circ., 1900).

[33] Simpson *v.* First National Bank, 129 Fed. 257 (C. C. A., Eighth Circ., 1904); Barber A. P. Co. *v.* Forty-Second St., etc. Ry. Co., 180 Fed. 648 (C. C. A., Second Circ., 1910); St. Louis Gas Light Co. *v.* St. Louis, 11 Mo. App. 55, affirmed 88 Mo. 202 (1885).

[34] L'Herbette *v.* Pittsfield National Bank, 162 Mass. 137, 38 N. E. 368 (1894).

[35] American Surety Co. *v.* Pauly, 170 U. S. 133 (1898); Fidelity & Deposit Co. *v.* Courtney, 186 U. S. 342 (1902); Bank of Overton *v.* Thompson, 118 Fed. 798 (C. C. A., Eighth Circ., 1902); Dillaway *v.* Butler, 135 Mass. 479 (1883); Allen *v.* South Boston R. Co., 150 Mass. 200, 22 N. E. 917 (1889); Benedict *v.* Arnaux, 154 N. Y. 715, 49 N. E. 326 (1898); Brooklyn, etc. Co. *v.* Standard, etc. Co., 193 N. Y. 551, 86 N. E. 564 (1908).

that an agent discloses to his principal whatever is known to the agent and pertinent to the agency is not pushed to the absurdity that the agent is presumed to disclose to the principal the fraud which the agent is working upon him. The same principle applies to book entries. An entry fraudulently made upon the corporate books is not an admission by the corporation or binding upon it unless the corporation be estopped to show the fraud.[36] In fairness a similar rule should obtain with respect to notice from such fraudulent entries. Indeed there is authority which looks in this direction. Thus one who becomes surety upon a fidelity bond given to a corporation to secure the honesty of an employee is not discharged because the corporation does not disclose that the employee is dishonest, where such dishonesty was unknown to the agents of the corporation who took the bond on its behalf, even though such dishonesty would have been discovered had those agents used due care in examining its books.[37] It is true that in none of these cases was the effect of the books as notice directly considered. Yet these cases indicate, if they do not decide, that entries made in fraud of the corporation are not notice to the corporation. To render the entry notice to the corporation it must be made upon its behalf in the usual course of business.

IV.

We now reach the last phase of our problem. Assume that the corporation has notice of a certain fact from its books or otherwise, but that the officer who acts on its behalf is personally ignorant of the fact in question. Is the corporation bound by knowledge of the fact? This is the converse of the usual problem of the ignorant principal and the well-informed agent. In the present case the principal knows and the agent does not know.

Logically the problem is not difficult. As has been already shown the law, under the proper circumstances, charges an inno-

[36] Holden *v.* Hoyt, 134 Mass. 181 (1883); City Electric St. Ry. Co. *v.* First National Bank, 62 Ark. 33, 34 S. W. 89 (1896).

[37] Tapley *v.* Martin, 116 Mass. 275 (1874); Bowne *v.* Mount Holly Bank, 45 N. J. L. 360 (1883); Wayne *v.* Commercial National Bank, 52 Pa. St. 343 (1866); Bennett *v.* Building Association, 57 Tex. 72 (1882). But the surety would be discharged if such information were knowingly withheld. Railton *v.* Matthews, 10 Cl. & Fin. 934 (1844); Smith *v.* Governor, etc. of Bank of Scotland, 1 Dow 272 (1813).

cent principal with the knowledge possessed by his agent.[38] It is just that the principal who carries through a transaction by means of several agents should stand legally in the same situation as if he had performed the whole operation in person. Were this not the rule a man could escape all knowledge by multiplying agents. Since for this purpose the law under certain conditions identifies agent and principal, it does not seem material in which of them the knowledge is. If the knowledge of the agent may by law affect the principal, the knowledge of the principal should equally affect the acts performed for him by the agent. In justice the rule should work both ways. Yet the cases are few.

In Mechanics' Bank of Alexandria *v.* Seton,[39] Seton brought a bill in equity to compel the bank to transfer to him certain stock of the bank which stood upon the books in the name of one Lynn, alleging that Lynn held the stock as trustee for him. The bank set up in defense that it had made loans to Lynn in good faith upon the security of the stock. The proof tended to show that at the time the stock was entered on the books in the name of Lynn notice of the trust was given to the then board of directors. Subsequently a different board made loans to Lynn upon the security of the stock in ignorance of the trust. The court decided that the bank was charged with notice of the trust. The principle is thus stated by Thompson, J.:

"Notice to the board of directors when this stock was transferred to Lynn that he held it in trust only was notice to the bank; and no subsequent change of directors could require a new notice of this fact. So that if the bank had sustained any injury by reason of the subsequent board not knowing that Lynn held the stock in trust, it would result from the negligence of its own agents and could not be visited upon the complainants."

In Curtice *v.* Crawford County Bank [40] the question was whether the defendant bank obtained a statutory lien upon certain stock with notice of the rights of the plaintiff in such stock. The Court

[38] Duncan *v.* Jaudon, 15 Wall. (U. S.) 165 (1872). See also Armstrong *v.* Ashley, 204 U. S. 272 (1906).

[39] Mechanics' Bank of Alexandria *v.* Seton, 1 Pet. (U. S.) 299 (1828). See also New England Car-Spring Co. *v.* Union India Rubber Co., 4 Blatchf. 1, 7 (C. C., Second Circ., 1857); Allen *v.* Puritan Trust Co., 211 Mass. 409, 420, 97 N. E. 916, 920 (1912), already discussed, p. 244.

[40] 118 Fed. 390 (C. C. A., Eighth Circ., 1902).

of Appeals found that two or three years before the bank made its loans upon the stock Curtice gave notice of his interest to Turner, the president of the bank, and that the loans were made by other officers of the bank who were ignorant of the plaintiff's rights. The court, in deciding that the bank took subject to Curtice, said, by Thayer, J.:

"Under these circumstances we are of opinion that Turner must be regarded as having been acting for the bank when he received notice that the stock was held in pledge by Curtice, and that the knowledge which was acquired in the course of that interview affected the bank generally even if it was not communicated to the other executive officers. It was at least knowledge of a fact which ought to have been communicated to the other officers of the corporation to govern their future action."

In Elliott *v.* Worcester Trust Co.[41] the plaintiff sued to recover a sum of money which had been deposited in the City National Bank with which the defendant had merged. The defendant set up as a defense that this deposit had been paid out to take up notes of the plaintiff payable at the City National Bank. The agreed facts admitted that prior to the merger the plaintiff had notified the City National Bank not to pay such notes and that none of the defendant's officers knew of such notice. Upon the plaintiff's account was stamped a notice that the deposit was "held on the same terms as it was held by the City National Bank." The court decided that the defendant was bound by the notice given to its predecessor even though this was not known to any of the defendant's officers.

In Gibson *v.* National Park Bank[42] a certain railroad carried its deposit with the defendant bank in the name of its treasurer. This was known to the executive officers of the bank. The account was attached as the account of the railroad by a railroad creditor. It was thereafter paid out by a teller who did not know of the attachment. The attaching creditor sued the bank, and it was held that he could recover. Chief Justice Ruger thus states the principle:

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[41] 189 Mass. 542, 75 N. E. 944 (1905). See also Allen *v.* Puritan Trust Co., 211 Mass. 409, 420, 97 N. E. 916, 920 (1912).

[42] 98 N. Y. 87 (1885).

"It [the bank] cannot shield itself from liability by alleging the ignorance of the agent making the payment, while other agents, having authority and owing a duty to act in the premises had knowledge of the facts, which made such payment a violation of duty on the part of the corporation."

The English cases should be considered by themselves in chronological order.

In Mayhew *v.* Eames [43] the plaintiffs brought assumpsit against a common carrier for the loss of a package containing £87 in bank notes. The defendant relied upon a notice given to the plaintiffs themselves, that he would not be liable for any package exceeding £50 in value unless that value was stated and paid for accordingly. The clerk who did up the package and delivered it to the defendant knew the contents of the package but was ignorant of the notice. In directing a nonsuit Abbott, C. J., said:

"The traveller was their [plaintiff's] agent and made the contract solely on their behalf; and as it is so the notice applies as much as if they had themselves given the parcel out to be carried."

The case was then carried to the Court of King's Bench,[44] which affirmed the judgment *per curiam:*

"But the knowledge of the principal is the knowledge of the agent. . . . But as the plaintiffs suffered their agent to send notes by these coaches, we think that knowledge of the notice having been brought home to the plaintiffs the carrier is thereby protected from such loss, although the parcel was sent by an agent."

Willis *v.* Bank of England [45] was an action of trover by the assignee in bankruptcy of N. to recover the value of three post bills which had been accepted by the bank. On March 16 the assignee gave notice to the London office of the bank to stop payment on the bills. On April 12 N. cashed the bills before maturity at the Gloucester branch of the bank. The agent at the Gloucester branch was ignorant that notice to stop payment had been given. There was a verdict for the plaintiff which was upheld on appeal. Lord Denman thus states the rule:

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[43] 1 Car. & P. 550 (1825). [44] 3 B. & C. 601 (1825).

[45] 4 Ad. & E. 21 (1835). Both cases were cited and distinguished in Powles *v.* Page, 3 C. B. 16 (1846).

"The general rule is that notice to the principal is notice to all his agents; at any rate if there be reasonable time, as there was here, for the principal to communicate that notice to his agents before the event which raises the question happens."

The case of Cornfoot *v.* Fowke,[46] which must next be considered, has been the subject of considerable judicial limitation and criticism. In brief the facts were these. The plaintiff sued upon a written agreement to take a lease of a furnished house. The defendant pleaded that he was induced to make the agreement "by means of the fraud, covin, and misrepresentation" of the defendant. The evidence tended to show that before the agreement was made the defendant asked the agent of the plaintiff: "Pray, sir, is there anything objectionable about the house?" that the agent replied: "Nothing whatever"; that the house next door was a brothel; that this was known to the plaintiff but not to his agent; and that the plaintiff did not know of the representation. The Court of Exchequer gave judgment for the defendant. The reasons given were various. Rolfe, B., held that the authority of the agent to make the representation had not been shown. Parke, B., and Alderson, B., held that the plea of "fraud and covin" had not been made out by proof that the agent innocently represented that there was nothing objectionable about the house while the principal knew that there was a brothel next door. Lord Abinger, C. B., dissented on the ground that for the purpose of the plea the representation of the agent was to be considered that of the principal, and the falsity of the representation to the knowledge of the principal was sufficient to sustain the plea.

The opinions of Parke, B., and Alderson, B., proceed upon the theory that proof of conscious moral obliquity, either in the agent or in the principal, is essential to sustain a plea of fraud and covin. They then draw the obvious conclusion that an innocent principal who has knowledge and an innocent agent who makes a misrepresentation do not, even if added together, produce the conscious moral obliquity demanded by the plea. Lord Abinger, on the other hand, maintains that moral obliquity need not be proved to sustain a plea of fraud and covin. He considers that the knowledge of the principal and the innocent misrepresentation of the agent must be

[46] 6 M. & W. 358 (1840).

considered together, and so considered are sufficient to sustain the plea. Plainly, therefore, the question decided was as to the nature of the proof required to sustain a plea of fraud and covin.[47]

Moreover, the decision is considerably shaken by the later case of Ludgater *v.* Love.[48] That was an action for damages for an alleged fraudulent representation by the son of the defendant upon the defendant's behalf. The son, to induce the plaintiff to buy certain sheep belonging to the father, represented that the sheep were all right. The defendant purchased in reliance upon this representation. In fact the sheep had the rot. This the father knew when he committed the sheep to the son to sell, but withheld the information from the son, who acted in good faith. The jury found these facts specially, and a verdict was entered for the plaintiff. The case was thereupon taken to the Court of Appeal, where the judgment was affirmed. In the course of his opinion Brett, L. J., said:

"If the son was authorized to make the representations, whether such authority was express or implied, we are of opinion that the defendant was, by reason of his own fraudulent mind, liable, notwithstanding want of fraud in the son. We are of this opinion notwithstanding the decision of Cornfoot *v.* Fowke (*ubi sup.*) if that decision is contrary to this view."

The four American cases, then, are unanimous in holding that a corporation affected with notice does not escape the effect of such notice because the facts are not known to the agent who acts on its behalf. New York, Massachusetts, and the federal courts all take this view. The English cases, on the other hand, are somewhat wavering. Mayhew *v.* Eames and Willis *v.* Bank of England decide squarely that if the principal has notice he is bound even though the agent is ignorant. Then comes the confusion created by Cornfoot *v.* Fowke. This injects into the situation the rather narrow English rule that to sustain an allegation of fraud there must be proof of *conscious* moral obliquity.[49] In this respect the

[47] See the remark of Willes, J., during the argument in Barwick *v.* English Joint Stock Bank, L. R. 2 Ex. 259 (Ex. Ch. 1867), and the careful explanations of the case by Lord Brougham and Lord St. Leonards in National Exchange Co. *v.* Drew, 2 Macq. 103, at pp. 108 and 144 (H. L., 1855).

[48] 44 L. T. R. N. S. 694 (C. A., 1881). See also Fuller *v.* Wilson, 3 Q. B. 58, S. C. reversed on a point of pleading *sub nom.* Wilson *v.* Fuller, 3 Q. B. 68, 1009 (Ex. Ch., 1843).

[49] See Derry *v.* Peck, 14 App. Cas. 337 (1889).

American cases lay stress upon the result to the injured party instead of upon the state of mind of the man who makes the representation. Thus in this country the better view is that deceit will lie where a representation of fact, made as of knowledge and relied upon, is untrue, even though the party who made the representation honestly believed it to be true.[50] Cornfoot *v.* Fowke, however, has been considerably limited and criticized, and in the later case of Ludgater *v.* Love is treated as of slight authority. It must be remembered, also, that all these English cases except Willis *v.* Bank of England deal with human principals. That case concerned a corporation and is in accord with the American view. In view of the peculiar judicial history of Cornfoot *v.* Fowke, Willis *v.* Bank of England seems to be unshaken and to be the controlling authority.

Both upon principle, then, and upon authority a corporation as matter of law is charged with knowledge of entries made upon its books on its behalf in the usual course of business. If facts so recorded are material the corporation cannot escape the effect of such notice because the agent who acts on its behalf is ignorant of the entries. The cases suggest that the agent is constructively charged with such knowledge, and that his constructive knowledge becomes the constructive knowledge of the corporation. This seems rather like whipping the devil round a stump in order to attain a just result. It is far simpler and more logical to hold that entries made upon the corporate books on its behalf and in the usual course of business are notice directly to the corporation as matter of law.

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[50] Litchfield *v.* Hutchinson, 117 Mass. 195 (1875); Fisher *v.* Mellen, 103 Mass. 503 (1870); Rothschild *v.* Mack, 115 N. Y. 1, 21 N. E. 726 (1889); Lehigh Zinc, etc. Co. *v.* Bamford, 150 U. S. 665 (1893).